WP(C) 1043/2007
BEFORE
THE HON'BLE MR. JUSTICE B.K.SHARMA

JUDGMENT AND ORDER (ORAL)

Heard Mr. B.K. Mahajan, learned counsel for the petiioner as well as Mr. B.C. Saikia, learned State counsel representing the Respondents No.1, 2 and 3. also heard Mr. B.C. Das, learned Senior counsel representing the respondent-Board. I have also heard Mr. D.C. Borah, learned counsel representing the Respondent No.5, who has been arrayed as party respondent to-day.

2. By means of this writ petition, the petitioner, a Senior Environmental Engineer under the Board holding the charge as the Member Secretary, has assailed the legality and/or validity of the Annexure-6 communication dated 26th February, 2007 issued by the Government of Assam in the Environment and Forests Department directing him to hand over charge of Member Secretary to the senior-most Officer/Engineer on his superannuation with effect from 28.2.2007. It is the Respondent No.5, who claims to be the senior-most Officer/Engineer of the Board and thus, is entitled to take charge as the Member Secretary.

3. According to the petitioner, the Government of Assam in the Environment and Forests Department has got no jurisdiction and/or authority to issue direction to the petitioner to hand over the charge of Member Secretary on his purported superannuation with effect from 28.2.2007. Referring to the purported resolution adopted by the Board on 21.2.2007 in its 84th meeting raising the age of superannuation of the employees of the Board from 59 years to 60 years, it is the case of the petitioner that he being an employee of the Board, is entitled to continue in service up-to the age of 60 years which he will be attaining on 28.2.2008. Thus, according to the petitioner, the impugned letter dated 26.2.2007 issued under the signature of the Deputy Secretary to the Government of Assam, Environment and Forests Department is unauthorized and uncalled for being contrary to the decision of the Board to raise the age of superannuation to 60 years and since taking into account the said resolution adopted by the Board, the petitioner will retire from service on 28.2.2008.

4. From the above narration of the basic fact, the issue calls for determination of this Court is as to whether the Government in the Environment and Forest Department is authorized to issue the impugned letter dated 26.2.2007 asking the petitioner to act in a particular way on ground of attaining the age of superannuation with effect from 28.2.2007. While it is the case of the petitioner that he being an employee of the Board, it is the Board, which is the appointing and controlling authority and the Government in the particular department cannot dictate the terms relating to the affairs of the Board, more particularly, as to the age of superannuation and other service conditions of its employees.

5. The Respondent No.4 i.e. the Deputy Secretary to the Government of Assam in the Environment and Forests Department has filed an affidavit-in-opposition and so also, by the Respondent No.3 i.e. the Chairman of the Board. The Respondent No.3 has also filed an additional affidavit. The petitioner has also filed an affidavit-in-reply to the affidavit-in-opposition filed by the Respondent No.4. While it is the stand of the Respondent No.4 that the Pollution Control Board could not have taken the resolution raising the age of superannuation up-to the age of 60 years, without approval of the Government, it is the stand of the Respondent No.3 that such resolution has been adopted as empowered as per the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and the rules framed thereunder namely, the Water (Prevention of Pollution) (Assam) Rules, 1977.

6. Although Mr. B.K. Mahajan, learned counsel for the petitioner as well as Mr. B.C. Das, learned Sr. counsel assisted by Mr. Baruah, learned counsel repre

senting the Board have submitted that the Board having raised the age of superannuation to 60 years by adopting a resolution it is immaterial as to whether the Government of Assam has raised the age of superannuation to 60 years for its employees or not. They have submitted that as per the provisions of the Act and the rules, the Board being an independent authority without any control of the Government, the impugned letter dated 26.2.2007 could not have been issued by the Government directing the petitioner to hand over charge to the senior-most Officer/Engineer upon his purported superannuation on 28.2.2007.

7. Controverting the aforesaid submissions made by the learned counsel for the petitioner as well as the Board, Mr. Saikia, learned State counsel has submitted that the Board having been created by the State of Assam in accordance with the provisions of the Act and the Board being in receipt of grants-in-aid even to the extent of payment of salary and allowance to its employees, it cannot be said that the Board is not under the deep and pervasive control of the Government of Assam. Mr. D.C. Borah, learned counsel appearing for the Respondent No.5 submits that even on the occasion when the retirement age of the Government employees was raised to 59 years, the Board acted as per the decision of the Government and raised the age of superannuation of the employees of the Board from 58 years to 59 years. Referring to the various provisions of the Act and the Rules, he submits that the writ petition is misconceived. According to him, the Board cannot adopt the resolution taking the major decision and then to say that no approval of the Government is required. Mr. Saikia, learned State counsel has also produced certain documents to emphasize that it is the State finance, on the basis of which the major works of the Board run and thus, it cannot be said that the Government of Assam cannot have any say relating to the affairs of the Board, more particularly, when such affairs involve the finance of the State.

8. I have considered the submissions made by the learned counsel for the parties and the materials on record. The petitioner is holding the substantive post of Senior Environmental Engineer to which post he was promoted by office order dated 28.1.1989. Although the petitioner claims that his service condition cannot be controlled by the Government of Assam in the particular department, but it is by Annexure-2 notification dated 5.4.2002 the petitioner was allowed to hold the charge of Member Secretary of the Board by none other than by the Government of Assam. The notification dated 5th April, 2002 was issued by the Commissioner and Secretary to the Government of Assam in the Science, Technology and Environment Department. The petitioner accepted the assignment bestowed on him by the Government of Assam and continued as such and now, in view of the impugned communication, by which he has been directed to hand over charge to the senior-most Officer/Engineer upon superannuation with effect from 28.2.2007, has questioned the very authority of the Government of Assam in the particular department.

9. The Annexure-3 to the writ petition is the copy of the Resolution No.2 (a) of the Board adopted in its 84th meeting held on 21.2.2007. As per the said resolution, the age of superannuation of the employees of the Board would be 60 years with effect from 21.2.2007. By the same very resolution, the Chairman of the Board was authorized to issue the Executive Order to that effect. After the resolution was adopted, the Chairman of the Board by his letter dated 22.2.2007 addressed to the Chief Minister of the State communicated the decision of the Board adopted by the aforesaid resolution. Copies of the letter were endorsed to the Minister of Environment and Forests, Government of Assam; the Chief Secretary of the State and also the Commissioner and Secretary to the Government of Assam in the Environment and Forests Department. It is not understood as to why copies of the letter along with the resolution were required to be endorsed to the aforesaid authorities, if it is the case of the Board that it is not under any kind of control of the Government of Assam in the particular department. In that case, it was also not necessary to address the letter to the Chief Minister of the State.

10. Thus, from the materials on record, what has transpired is that the Boa

rd is fully aware that it being the creation of the State and the Board having been provided with financial aid, the Government has got its control over the Board. At this stage, it will be pertinent to mention that the same very Chairman of the Board i.e. the Respondent No.3 by his notice dated 15th February, 2006 provided general information to all concerned that the age of superannuation has been raised to 59 years from 58 years in terms of the Government decision conveyed vide notification dated 14.10.2005. Thus, on the occasion of raising the age of superannuation from 58 years to 59 years, the same very Chairman of the Board took recourse to the Government notification dated 14.10.2005, but on this occasion, it is the stand of the same very Chairman that the age of superannuation having been raised by the Board, the Government cannot have any say in the matter since the Board is an independent authority without there being any control of the Government. This contradictory stand of the Board and its Chairman stares on the face of it.

11. Coupled with the above, the documents which Mr. Saikia, learned State counsel has furnished to the Court indicate that the funds are being provided by the Government of Assam towards disbursement of pay and allowances of the employees of the Board. In this connection, the communications dated 28.2.2004, 11.4.2004, 21.11.2005 and 25.11.2005 may be referred to which have been produced by Mr. Saikia, learned State counsel. From these documents, it is seen that it is the Government of Assam in the Environment and Forests Department which sanctioned the required amount as grants-in-aid to meet the salary requirement of the employees of the Board. The letters were addressed to the Accountant General of Assam and the fund was provided subject to production of the utilization certificate in due course. Thus, for the purpose of grants-in-aid and/or funds were provided towards pay and allowances to the employees of the Board, the Board takes the same from the Government of Assam, but when the issue relating to the raising of the age of superannuation comes for consideration, the strange plea is taken by the Board that it is not under any kind of control of the Government.

12. Learned counsel for the Board has produced the relevant Register containing the purported resolution adopted by the Board in its 84th meeting. The meeting was held on 21.2.2007 and altogether 6 officials participated in the proceeding. It is on record that the Board consists of 17 members including the Chairman and the Member Secretary. The Board was reconstituted by the Government of Assam on 31.3.2005 vide notification dated 31.3.2005 issued in the name of the Governor of Assam. The Board’s members are mostly the Government officials including the Secretary to the Government of Assam in the Environment and Forests Department. The 84th Board’s meeting held on 21.2.2007 was attended by only 6 officials namely, Shri J.L. Dutta, Chairman of the Board, Shri P.C. Baruah, Member Secretary (I/C) i.e. the petitioner, Shri B.B. Dhar, IFS, Chief Conservator of Forests, Human Resource Development & Veterinary, Assam, Shri P.C. Bhattacharjee,, Professor, Zoology Department of Gauhati University, Dr. S.K. Dutta, Deputy Director, Drugs and Narcotics Department, Directorate of Forensic Science and Shri A.K. Pathak, Additional Chief Engineer, Public Health Engineering Department.

13. As noticed above, by the notification dated 31st March, 2005, the Board was reconstituted with 17 members. However, the meeting held on 21.2.2007 was attended by 4 members and 2 authorized representatives of the other 2 members. In this connection, Mr. B.C. Das, learned counsel representing the Board has referred to Rule 4 of the Rules of 1977, in terms of which 5 members shall form a quorum for any meeting. According to Mr. Das, there was quorum in the meeting held on 21.2.2007, the same having been attended by 4 members and 2 authorized representatives of the other 2 members. In the meeting, the aforesaid members present took the resolution to enhance the age of superannuation up-to 60 years from 59 years. As per the original resolution, upon raising the age of superannuation to 60 years, the Service Rules of the Pollution Control Board, Assam should be suitably amended. However, it is not known as to whether any such amendment has been brought to the Rules.

14. As noted above, the basic question which calls for consideration of this Court is as to whether the resolution adopted by the Board raising the age of superannuation from 59 years to 60 years in respect of its employees requires any approval of the Government of Assam. From the discussions made above, there is no manner of doubt that the Government provides fund to the Board even to the extent to meeting the requirement of payment of monthly salary for the employees of the Board. If that be so, it cannot be saisd that the Board can raise the age of superannuation and then, to insist upon the Government to pay the pay and allowances to its employees even for the period of extension of service.

15. The stand of the Board as well as the petitioner is altogether different. As discussed above, it is their stand that the Government does not have any control over the Board. If that be so, the question necessarily arises as to why on the earlier occasion, the Chairman of the Board, while enhancing the age of superannuation of the employees of the Board had fallen back on the Government notification raising the age of superannuation in respect of the Government employees. The question also arises as to why and how the Board could accept the fund provided by the Government of Assam to meet the pay and allowances of its employees and also the approval of the Government towards up-gradation of 3 senior-most Executive Engineers as Senior Environmental Engineers. Thus, if the stand of the Board is to be accepted, then the same will lead to a situation in which the Board, for all matters, accepts the control of the Government in the particular department, but in respect of the particular issue raised in this writ petition, denies the existence of the control of the Government over it.

16. The State Pollution Control Board has been constituted by the State Government under Section 4 of the Act. Section 19 of the Act lays down the power of the State Government to restrict the application of the Act to certain areas. As per the provisions of Section 29, the State Government may at any time either on it its own motion or on an application made to it in this behalf, call for the records of any case where an order has been made by the State Board under the provisions of the Act indicated thereunder. Under Section 62 of the Act, the Government is empowered to supersede the State Board.

17. Section 33 of the Act deals with the fund of the State Board. The State Board shall have its own fund, and the sums which may, from time to time, be paid to it by the State Government. Section 37A of the Act deals with borrowing powers of the Board. Such borrowing power is upon authority given to it by the State Government. Section 38 of the Act deals with budget of the Board. Such budget is to be prepared by the Board and copies thereof to be endorsed to the State Government.

18. Rule 21 of the Rules of 1977 provides that the power to grant leave to Chairman and the Member Secretary vests with the State Government. Rule 39 of the Rules provides that if the services of the Engineer are considered necessary for more than 3 months, the Board is to seek concurrence of the State Government for such appointment. Rule 19 (3) of the Rules provides that the Board shall not appoint any person as Consulting Engineer without prior approval of the State Government if the emoluments or fees payable to him exceed to Rs.2,000/- per month. Rule 22 (vi) of the Rules provides that the Board may create such post as it considers necessary for efficient performance of its functions and may abolish any post so created. However, for the creation of and appointment to posts in the pay scale maximum of which is above Rs.4,750/- per month or as revised by the Government from time to time above the corresponding post of the rank of Executive Engineer, the Board shall obtain prior sanction and approval of the State Government. In the instant case, it has been admitted by the learned counsel for the petitioner that the petiioner as the Senior Environmental Engineer is enjoying the revised pay scale corresponding to pre-revised pay of Rs.4,750/- per month.

19. Rule 24 of the Rules relates to recruitment of staff. Rule 24 (v) of the Rules says that the employees of the Board shall be governed by the same rules in respect of scales of pay etc. as are prescribed by the State Government for its employees of corresponding status unless otherwise specified by the Board at the time of creation. Rule 24 (vi) of the Rules provides that the Board may introduce the scheme of Contributory Provident Fund and other schemes for the benefit of its employees with approval of the Government.

20. From the aforesaid provisions of the Act and the Rules, there is no manner of doubt that the Government of Assam exercises its control over the Board and that the Board cannot act in all matters independently without there being concurrence and/or approval of the Government of Assam. From the above, it will be seen that the Board is under deep and pervasive control of the Government of Assam and if that be so, the issue relating to raising the age of superannuation in respect of its employees cannot be taken unilaterally and to insist that he Government does not have any control over the Board. If the age of superannuation, as has been raised by the Board, is to be accepted, the employees of the Board will have to be paid for the extended period of service by the State Government. If that be so, can it be said that the Board can act without the approval of the State Government. The answer will be in the negative.

21. For all the aforesaid reasons, discussions and conclusions, I do not find any merit in this writ petition and accordingly, it is dismissed. The petitioner shall carry out the direction as contained in the impugned communication dated 26.2.2007 (Annexure-6 to the writ petition). This direction is issued in view of the submission made by the learned counsel for the Respondent No.5 that in spite of the said communication and the fact that the petitioner has retired from service on attaining the age of superannuation with effect from 28.2.2007, he has not handed over charge to him.

22. Writ petition is dismissed. There shall be no order as to costs.